

FIRST DIVISION

[G.R. No. 139150, July 20, 2001]

**PABLO DELA CRUZ, PETITIONER, VS. COURT OF APPEALS AND
PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

D E C I S I O N

KAPUNAN, J.:

In this petition for review on certiorari, SPO4 Pablo dela Cruz (petitioner) seeks the reversal of the Decision, dated November 20, 1998, of the Court of Appeals in CA-G.R. CR No. 19515 affirming his conviction for the crime of homicide. Likewise sought to be reversed and set aside is the appellate court's Resolution of June 14, 1999 denying petitioner's motion for reconsideration.

The Regional Trial Court (RTC), Branch 88 of Quezon City found petitioner guilty beyond reasonable doubt of homicide. He was sentenced to suffer the penalty of imprisonment for six (6) years and one (1) day of *prision mayor* as minimum, to twelve (12) years and one (1) day of *reclusion temporal* as maximum.

Initially, the Information filed against petitioner charged him with homicide. It stated:

That on or about the 16th day of June, 1993 in Quezon City, Philippines, the said accused, with intent to kill and without any justifiable cause, did then and there, wilfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of LTC VICENTE GARABATO, JR. Y GELLANGALA by then and there, shooting the latter on the different parts of his body with the use of a gun, thereby inflicting upon him serious and mortal wounds, which were the direct and immediate cause of his untimely death, to the damage and prejudice of [the] heirs of the said LTC. VICENTE GARABATO, JR. Y GELLANGALA.

CONTRARY TO LAW.^[1]

Subsequently, the Information was amended charging petitioner with murder. The Amended Information reads:

That on or about the 16th of June, 1993 in Quezon City, Philippines, the said accused, conspiring and confederating with one whose true name, identity and whereabouts are still unknown and mutually helping each other, did then and there wilfully, unlawfully, and feloniously, with intent to kill and with treachery, attack, assault and use personal violence upon the person of one Lt. Col. VICENTE GARABATO, JR. Y GELLANGALA, by then and there shooting the latter with a gun and stabbing him with a bladed weapon, hitting him on different parts of his body, thereby inflicting upon said LTC. VICENTE GARABATO, JR. Y GELLANGALA serious

and mortal wounds which were the direct and immediate cause of his death thereafter.

CONTRARY TO LAW.^[2]

At his arraignment, petitioner entered a plea of not guilty. Subsequently, trial ensued. The prosecution's account of the case is summarized by the Solicitor General in the appellee's brief as follows:

Fr. Vicente G. Garabato, the deceased, is a Military Chaplain assigned at HQS-AFP, Camp Aguinaldo, Quezon City.

Fr. Garabato hired Abundo Tad-y and Mario Mascardo in the construction of his house at Sangandaan, Quezon City.

On June 16, 1993, at around 2:40 o'clock in the afternoon, the two workers were unloading construction materials consisting of wood and sand from a Ford Fiera owned and driven by Fr. Garabato. At that moment, Fr. Garabato was seated at the driver's seat.

The Ford Fiera was parked near the dead end of Marcel Drive, Sangandaan, Quezon City, which is about two (2) meters away from the house of Fr. Garabato being constructed because the Ford Fiera could not be parked near the house being constructed since the pathway leading to the house is very narrow or about one (1) meters [sic] wide only.

The Ford Fiera specifically was parked in front of the house of the petitioner, SPO4 Pablo De La Cruz (a Philippine National Police personnel assigned at RHGS, HQS, CAPCOM, Camp Karingal, Quezon City) where another vehicle was also parked behind it.

While the two workers were unloading the materials from the Ford Fiera, the petitioner who was standing at the garage of his house confronted Fr. Garabato on the manner by which the Ford Fiera was parked which practically blocked the petitioner's drive way in such a way that petitioner's "owner-type jeep" could not pass through. Petitioner demanded from Fr. Garabato to move the Ford Fiera backward and angrily uttered, "*(P)utang ina mo, you are still there! Lalabas na ako.*"

Fr. Garabato reacted by saying, "*(j)ust a minute. I will have the woods carried down*". Thereafter, Fr. Garabato moved the Ford Fiera a little backward but there is another vehicle parked behind it so that he could not move the Ford Fiera backward further.

Enraged by Fr. Garabato's helpless effort to clear the driveway, petitioner suddenly shouted invectives anew at Fr. Garabato, "*(P)utang ina mo, bumaba ka dito. I am in a hurry. You come down here*". Father Garabato ignored petitioner's furious challenge.

Petitioner went out from the gate of his house, walked towards Fr. Garabato and grabbed the latter's collar. An old woman tried to pacify the petitioner.

Fr. Garabato moved his Ford Fiera forward at a distance of about 15 meters towards Tandang Sora, Avenue, leaving petitioner's driveway open. Immediately thereafter, Fr. Garabato got off from the Ford Fiera and helped his two workers unload the remaining materials.

Moments later, petitioner drove his jeep out from the garage of his house with his two kids on board at the backseat. Petitioner accosted Fr. Garabato to move his Ford Fiera since petitioner's jeep could not pass through abreast together with the Ford Fiera (the road is more or less five (5) meters wide).

Fr. Garabato drove the Ford Fiera forward and parked further at the side of the road. By that time, petitioner's jeep could already pass through the road.

At that moment, the two workers were standing behind the Ford Fiera, and they heard successive shots of gunfire. They instinctively turned their sights towards the origin of the gunshots; such that they saw smoke coming from the side of petitioner's jeep and saw petitioner seated in the driver's seat still holding his gun pointing towards the Ford Fiera.

Petitioner alighted from his jeep, walked towards Fr. Garabato's position, re-loaded his gun with another magazine and shot Fr. Garabato anew.

Petitioner immediately left the scene on board his jeep.

Out of fear of their lives, the two workers ran to the house being constructed. About half an hour later, Mario Mascardo went back to the *locus criminis* and there he saw the helpless body of Fr. Garabato surrounded by several curious spectators and police officers.

Fr. Garabato's body was rushed to Quezon City General Hospital by the responding police officers where he was pronounced dead on arrival.

Medico-legal Officer, Police Senior Inspector Vladimir Villasenor (a physician) conducted a *post mortem* examination on Fr. Garabato's body. He concluded that Fr. Garabato died of "*(h)emorrhage as a result of multiple gunshot wounds of the body*". The victim sustained six (6) gunshot wounds spread over his head and body. Four (4) of these wounds were diagnosed to be fatal, as the bullets pierced vital organs of the victim's body.

As a result of the police investigation conducted by SPO3 Jesus Patriarca, two (2) teams of policemen belonging to Sangandaan Police Station 2 of the Central Police District were dispatched to track down the petitioner's whereabouts who reportedly fled to Mindoro Oriental on the night of June 16, 1993, but the team returned on June 17, 1993 without arresting the petitioner.

While the manhunt continued, the petitioner's relatives sent surrender

feelers to Sangandaan Police Station.

On June 19, 1993, petitioner gave himself up to Superintendent Efren Santos, Chief of Police of Sangandaan Police Station and other police officers in the presence of a tabloid reporter and with the assistance of his counsel, Atty. Constante A. Ancheta at the house of petitioner's relatives at Project 8, Quezon City. Petitioner turned over his service firearms, a caliber 38 revolver and an M-16 rifle. Petitioner gave himself up to the police authorities to clear his name from any culpability of the crime imputed against him.

Thereafter, petitioner was brought to the Sangandaan Police Station and was presented to the media by Superintendent Efren Santos. After a while, Director Pedro Sistoza, Regional Director, Central Police District, and Senior Superintendent Deony Ventura, District Director, Central Police District at Camp Karingal, Quezon City, again presented petitioner to the press.

At the Sangandaan Police Station, prosecution witnesses, Abundio Tad-y Benito and Mario Mascardo positively identified petitioner Pablo De La Cruz as the person who shot Fr. Garabato.^[3]

For his part, petitioner interposed the twin defense of denial and alibi. The trial court summed up his version of the case as follows:

Accused firmly disclaims knowledge or participation in the aforesaid shooting incident. He denies having known or seen Fr. Garabato on June 16, 1993. He claims that at the time and date Fr. Garabato was shot, he was in Gagalangin Health Center in Tondo, Manila; that he and his two children, Carmela and Pamela, went to fetch his wife, Cornelia, who was employed therein as a midwife. From there, they would proceed to Baclaran Church to hear mass. This point was corroborated by defense witnesses, Cornelia de la Cruz (Pablo's wife) and Romeo Mabahagi (a janitor/utility man at Gagalangin Health Center). Romeo Mabahagi averred that as early as 2:00 in the afternoon of June 16, 1993, while on duty at Gagalangin Health Center, he saw Pablo de la Cruz and his wife and daughters at the health center. (TSN July 22, 1994 p. 11); that he cannot forget having seen Pablo de la Cruz at the health center on that particular date and time since incidentally, it was the birthday of one Dr. Perlita Yee, a physician at the said health center, and that there was even a birthday celebration then (TSN July 22, 1994, pp. 17-18); that he knew Pablo because he frequently sees him especially on Wednesdays whenever he fetches his wife, Cornelia, before they proceed to Baclaran Church to hear mass.

The Accused's defense is further corroborated by the testimony of witness, Ricardo Cuadra, who categorically stated that he witnessed the shooting incident which took place at Marcel Drive in the afternoon of June 16, 1993, and that he actually saw the face of the assailant, and he was certain that the assailant was NOT Pablo de la Cruz. (TSN July 7, 1994)^[4]

After due trial, the court *a quo* rendered judgment finding petitioner guilty of homicide, not murder as was charged in the Amended Information. The trial court ruled that the qualifying circumstance of *alevosia* was not sufficiently established by the prosecution. Upon the other hand, the trial court appreciated the mitigating circumstance of voluntary surrender. The dispositive portion of the trial court's decision reads:

WHEREFORE, premises considered, Accused, SPO4 PABLO DE LA CRUZ, is found GUILTY BEYOND REASONABLE DOUBT for the crime of HOMICIDE for the death of Fr. Vicente G. Garabato Jr., and taking into account the mitigating circumstance of voluntary surrender, unattended by any aggravating circumstance, this Court hereby sentences said accused to an indeterminate penalty of IMPRISONMENT for six (6) years and one (1) day of Prision Mayor as minimum, to twelve (12) years, and one (1) day of Reclusion Temporal as maximum; and to indemnify the heirs of Fr. Vicente Garabato, Jr. in the following amounts:

1. One Hundred Thirty Two Thousand, Nine Hundred Twelve Pesos (132,912.00) as actual damages;
2. Fifty Thousand Pesos (P50,000.00) by way of indemnity;
3. One Hundred Thousand Pesos (100,000.00) as attorney's fees; and
4. To pay the cost.

SO ORDERED.^[5]

On appeal, the CA affirmed the conviction of petitioner for homicide. The appellate court, however, modified the penalty as it held that the trial court erred in appreciating the mitigating circumstance of voluntary surrender. According to the CA, voluntary surrender, to be appreciated, must be spontaneous and unconditional. These conditions were found to be absent in petitioner's case. The dispositive portion of the CA decision reads:

IN VIEW THEREOF, the impugned decision of the trial court in Criminal Case No. Q-93-45654 is AFFIRMED with modification that the penalty be increased from an indeterminate penalty of IMPRISONMENT for SIX (6) YEARS AND ONE (1) DAY OF PRISION MAYOR AS MINIMUM TO FOURTEEN (14) YEARS, EIGHT MONTHS AND ONE (1) DAY OF RECLUSION TEMPORAL AS MEDIUM and to indemnify the heirs of Fr. Vicente Garabato, Jr. The total amount of One Hundred Eighty-Two Thousand, Nine Hundred Twelve Pesos (P182,912.00) as actual damages and indemnity for the death of Fr. Garabato, respectively. The award for attorney's fees against the accused-appellant is deleted. Costs against the appellant.

SO ORDERED.^[6]

Aggrieved, petitioner now comes to this Court alleging that: